

PLAINS MARKETING &	:	Order Docketing Appeal and
TRANSPORTATION, INC.,	:	Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 99-99-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 6, 1999

This is an appeal from an August 5, 1999, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). The Area Director's decision denied Appellant's belated attempt to appeal from a September 25, 1998, decision of the Acting Superintendent, Osage Agency, which assessed royalties and late charges for June 1998. For the reasons discussed below, the Board affirms the Area Director's decision.

On July 15, 1999, Appellant filed with the Area Director a Request for Leave to File Appeal Out of Time, together with a Notice of Appeal and Statement of Reasons. Appellant conceded that it had been furnished with "a copy of the Return Receipt reflecting delivery" of the Superintendent's decision, Request for Leave at 1, but contended that it could not locate a copy of the Superintendent's decision in its files and that none of its officials with responsibility for the matter could remember seeing the decision. Appellant argued, *inter alia*, that, "[g]iven Plains' diligent opposition to prior assessments, the BIA should have known that Plains would never have ignored the September 25, 1998, assessment." July 15, 1999, Notice of Appeal and Statement of Reasons at 1.

The Area Director was not persuaded by Appellant's arguments and, on August 5, 1999, dismissed its attempted appeal as untimely. Appellant appealed to the Board.

On August 24, 1999, the Board ordered the Area Director to furnish a copy of the return receipt for Appellant's copy of the Superintendent's September 25, 1998, decision and ordered Appellant to show why the Area Director's August 5, 1999, decision should not be summarily affirmed.

Responses have been received from the Area Director and Appellant.

The return receipt shows that Appellant received Certified Mail Article No. Z 425 762 888 on September 28, 1998, and that an employee of Appellant, Shane O'Reilly, signed for it.

Appellant concedes that it received an envelope from BIA on September 28, 1998, but contends that "[t]here is no evidence that the assessment letter was in that envelope, and the two Plains officials most responsible for receiving and handling the envelope believe that it was not." Appellant's Response at 1. Appellant submits declarations from two of its employees, both of whom state that Appellant has a record of careful handling of registered mail. One employee also states: "[I]t is inconceivable that the assessment letter was received by the company and mishandled." Declaration of Thomas J. Fewox, para. 8. In nearly identical language, the other employee states: "[I]t is inconceivable that the assessment letter was received by the company and lost." Declaration of Shane O'Reilly, para. 7.

Despite Appellant's statements that registered mail (and presumably certified mail) is handled carefully in its office, neither of Appellant's employees indicates that a log of incoming registered and certified mail is maintained. Thus, having conceded that it received something from BIA on September 28, 1998, it can only contend that "[w]hat, if anything was in the envelope remains an open question." Response at 5. 1/

The Superintendent's September 25, 1998, decision bears the caption "CERTIFIED MAIL: Z 425 762 888," the same number shown on the return receipt which was signed by Shane O'Reilly on September 28, 1998. The 3-day period between the issuance of the Superintendent's decision and the receipt of Article No. Z 425 762 888 by Appellant is consistent with the mailing time that would be expected for the decision. These circumstances give rise to the presumption that the document mailed to and received by Appellant was the Superintendent's September 25, 1998, decision.

Appellant's general statements concerning its practice in handling registered mail are insufficient to overcome this presumption. Similarly, the fact that Appellant had filed appeals from similar decisions is not evidence that Appellant did not receive the September 28, 1998, decision. 2/ See City of Sault Ste. Marie, Michigan v. Acting Minneapolis Area Director, 30 IBIA 218 (1997), dismissing as untimely one of several appeals filed by the same appellant concerning the trust acquisition of various tracts of land.

1/ Appellant suggests that it may have received an empty envelope. This suggestion is at odds with Appellant's claim of careful handling of mail. Careful handling ought to have led to inquiries concerning the intended contents of an empty envelope labeled "Certified Mail."

2/ Two appeals from Appellant are currently pending before the Board. They are docketed as IBIA 99-9-A and IBIA 99-42-A.

Appellant repeatedly remarks upon the fact that BIA did not contact Appellant when it failed to appeal the Superintendent's decision. See, e.g., Declaration of Thomas J. Fewox at para. 9: "[A]t no time did any representative of the Bureau of Indian Affairs contact me to learn the reason for our failing to file an appeal of the assessment letter. I find this failure to be inexplicable in light of our past handling of Osage royalty assessments."

Appellant does not explain the relevance of these remarks to the issue here. BIA had no obligation to inform Appellant when it failed to file a timely appeal. 3/ Nor did BIA share Appellant's responsibility for filing a timely appeal. It was BIA's responsibility to furnish Appellant with a copy of its decision. Responsibility for filing a timely appeal, however, rested solely with Appellant.

Appellant has not shown that it did not receive the Superintendent's September 25, 1998, decision on September 28, 1998.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, and the Area Director's August 5, 1999, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

3/ In any event, such notice would not have cured Appellant's failure to file a timely notice of appeal.